

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 2:10-cv-1007

**\$475,823.75, MORE OR LESS,
IN UNITED STATES CURRENCY;
TWO REAL PROPERTIES IN
WEST VIRGINIA and ONE REAL
PROPERTY IN KENTUCKY, together
with all improvements thereon
and appurtenances thereto,**

Defendants.

**(Myra C. Miller and John J. Miller;
No pending federal criminal charges)**

**UNITED STATES MOTION TO FURTHER AMEND THE
SCHEDULING ORDER AND EXTEND THE STAY OF THE CASE**

Comes now the plaintiff, United States of America, by counsel, Betty A. Pullin and Fred B. Westfall, Jr., Assistant United States Attorneys for the Southern District of West Virginia, and hereby moves the court, pursuant to Rule 16, Federal Rules of Civil Procedure, and 18 U.S.C. § 981(g)(1), as incorporated by 21 U.S.C. § 881(i), to further amend the scheduling order and extend the stay previously granted by this court, for a period of at least 180 days, on the grounds that there still exists the strong possibility that civil discovery in this case will adversely affect the ability of the government to continue with a related criminal investigation and a protective order will not adequately protect the interests of the United States.

In support of this motion, the United States provides the following:

1. On October 19, 2011, the United States filed a Motion to Amend the Scheduling Order and to Stay the Case, on the grounds that efforts being taken by opposing parties through the discovery process could have an adverse affect on the ability of the government to continue with a related criminal investigation and a protective order would not adequately protect the interest of the United States. Subject to the court's approval, the United States reserved the right to seek a further stay if necessary. (ECF 61).

2. Following a hearing on November 14, 2011, the court granted the United States motion and stayed the case for a period of no more than 180 days. (ECF 77). The stay is scheduled to expire May 12, 2012.

3. The underlying criminal investigation has been moving forward. On December 19, 2011, William F. Ryckman, M.D., appeared before the Honorable John T. Copenhaver, Jr., and pled guilty to a one-count information charging him with conspiracy to misuse a DEA registration number, in violation of 21 U.S.C. § 846. United States v. William F. Ryckman, M.D., Criminal No. 2:11-cr-00255 (USDC SDWV). In response to questioning by the court, Dr. Ryckman explained his role in the operation of the medical clinic at issue in this case. Additionally, when asked by the court as to whom Dr. Ryckman would consider to be his "coconspirators," Dr. Ryckman identified claimant Myra Miller and Dr. Katherine Hoover, M.D. A copy of the transcript of the plea hearing is attached hereto as "Govt's Exhibit A." (see pp. 28-39).

4. On March 28, 2012, Dr. Ryckman was sentenced by the district court to a term of imprisonment of 6 months, a one-year period of supervised release and a \$5,000 fine. His date to

self-report was scheduled for September 28, 2012, to enable him to fulfill his agreement to cooperate with the United States in the underlying criminal investigation.

5. Further extending the stay of this civil forfeiture action for another 180 days will allow the government to continue its criminal investigation without the risk of civil discovery being used to identify investigative strategies and techniques, to prematurely identify cooperating individuals, and revealing other evidence the premature disclosure of which would have a negative impact on the criminal case. The United States will provide criminal investigation status reports to the court in camera during the period of the stay, if the court so desires. Should circumstances arise that would enable the stay to be lifted before the 180 days have lapsed, the United States will file a motion to lift the stay. If the United States needs to have the stay further extended beyond the 180 days, the United States reserves the right to file such motion with the court.

6. In further support of this motion, the United States incorporates herein the legal authority authorizing stays in civil forfeiture proceedings previously set out in its original motion to amend the scheduling order and to stay the case filed on October 19, 2011 (ECF 61).

WHEREFORE, for the foregoing reasons, the United States respectfully requests the court to further amend the scheduling order and extend the stay previously granted by this court on November 14, 2011, for a period of at least 180 days.

Respectfully submitted,

UNITED STATES OF AMERICA
By Counsel

R. BOOTH GOODWIN II
United States Attorney

By: s/Betty A. Pullin
Betty A. Pullin, WV Bar Number: 5590

s/Fred B. Westfall, Jr.
Fred B. Westfall, Jr., WV Bar No. 3992
Attorneys for the United States
United States Attorney's Office
300 Virginia Street, East, Room 4000
Charleston, West Virginia 25301
Telephone: (304) 345-2200
Fax: (304) 347-5440
Email: betty.pullin@usdoj.gov
Email: fred.westfall@usdoj.gov